principal case consistently adheres to the contract theory of its Compensation Act. Its intimation that the conclusion reached must be limited to such a situation of fact appears to involve a repudiation of *American Radiator Co. v. Rogge, supra,* which nevertheless is cited in the opinion with apparent approval. It also leaves *Douthwright v. Champlin, supra,* little ground for support. Manifestly the absence of a statute applicable to the contract in its inception has no tendency to show an intention to assume a new contractual relationship from the mere transit across state lines. To ascribe such a result is of course merely a verbal subterfuge for a plain switch to the tort theory of the local act. If the failure to express dissent from the latter is an expression of assent to its provisions, this can follow only from the already established premise that the act is applicable to all employment, irrespective of origin, within the limits of the state. Such applicability, however, can be established only on the theory that the statute enunciates a rule of policy applicable territorially after the manner of the law of torts. For a discussion of *Douthwright v. Champlin, supra,* see (1917) 27 YALE LAW JOURNAL, 113.

WORKMEN'S COMPENSATION ACT—INJURY DUE TO THIRD PERSON'S FAULT—SUBROGATION OF EMPLOYER TO RIGHTS OF EMPLOYEE.—An employee sustained an injury in the course of his employment due to the negligence of one not his employer. He filed a claim under the Workmen's Compensation Act, accompanied, as required by the Act, by an assignment of any claims against third persons. After allowance of his claim but before payment of the award, he brought this action against the third person responsible for the injury. While the action was pending, the defendant, through the Workmen's Compensation Commission, settled with the employer under the assignment. Thereafter the plaintiff applied to the Commission to withdraw his claim against the employer, and was allowed to do so. *Held,* that the assignment became effective when executed, and even if it could be avoided by withdrawal of the claim without the employer's consent, the defendant, having paid the assignee while the assignment was in effect, was protected by such payment against further liability. *Sabatino v. Crimmins Const. Co.* (1918, N. Y. Trial T.) 168 N. Y. Supp. 495.

Except in a few states, the statutory right to compensation given to an injured employee by the workmen's compensation acts does not in itself either impair or add to his common law rights against third persons. *Lester v. Otis Elevator Co.* (1915, N. Y.) 169 App. Div. 613, 155 N. Y. Supp. 524. He has an election of remedies, but having chosen one, cannot assert the other. *Turnquist v. Hannon* (1914) 219 Mass. 560, 563; 107 N. E. 443, 444; *Miller v. New York Ry. Co.* (1916, N. Y.) 171 App. Div. 316, 157 N. Y. Supp. 200; but see *Houlihan v. Sulzberger & Sons Co.* (1917, Ill.) 118 N. E. 429. And where he has elected to proceed against the employer, the latter has not, in the absence of express statutory provision, any recourse against the real tort-feasor. *Inter-State Tel. Co. v. Public Service Elec. Co.* (1914, Sup. Ct.) 86 N. J. L. 26, 90 Atl. 1062. In New York and a few other states there are express provisions by which an employer who is compelled to pay is allowed recourse against the person actually at fault. See *Sandek v. Milwaukee Elec. Ry. & Lt. Co.* (1916) 163 Wis. 109, 157 N. W. 579; *Grand Rapids Lumber Co. v. Blair* (1916) 190 Mich. 518, 157 N. W. 29; *Otis Elevator Co. v. Miller* (1917, C. C. A. 8th) 240 Fed. 376. The time when this statutory right becomes fixed in the employer depends, of course, on the differing phraseology of the statutes. The decision in the principal case seems a sound construction of the statute governing the case. A subsequent amendment has dispensed with the requirement of an assignment executed by the claimant, providing that "the awarding of compensation shall operate as an assignment of the cause of action." The statutes of a few other

states go still further. The Illinois act, for example, in cases where all parties have accepted the act, limits the employee to his claim for compensation against the employer, transferring to the latter, without any election by the employee, the common law rights of the employee against third persons, to the extent necessary to reimburse the employer. For a recent case construing and upholding these provisions, see *Friebel v. Chicago City Ry. Co.* (1917, Ill.) 117 N. E. 467. See also *Matheson v. Minneapolis St. Ry. Co.* (1914) 126 Minn. 286, 148 N. W. 71, *accord,* and *cf. Peet v. Mills* (1913) 76 Wash. 437, 136 Pac. 685.